HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE G. V. SEETHAPATHY

Writ Appeal No.1578 of 2005 & batch

Between:

The Government of A.P., rep. by its
Secretary, School Education and others

… Appellants

And

Sri Sevadas Vidyamandir High School

… Respondents

::JUDGMENT::

Counsel for the appellants: Sri C.V. Mohan Reddy,
Advocate General, assisted by Government Pleader for School Education (in all the appeals

Counsel for respondent: Shri Rajkumar Rudra

Counsel for respondents in other appeals: Sarvasri M.V.S. Suresh Kumar,
Movva Chandra Sekhara Rao,
Kasa Jagan Mohan Reddy,
D.V. Sitarama Murthy,
K.V.N. Bhupal,
A.Venkata Ramana,
Ch.Samson Babu,
Ms.K.N. Vijaya Lakshmi,
N. Subbarao,
G. Tuhin Kumar,
Smt.K. Sesha Rajyam,
M. Prabhakar Rao,
S. Girmoji Rao,
T.V.S. Kumar,
Smt.S.A.V. Ratnam,

K. Chidambaram,
Smt.Y. Padmavathi,
M. Subba Reddy,
P. Roy Reddy,
K. Amarender Raju,
T. Srikanth Reddy,
Patlolla Venkata Reddy,
G. Vivekanand,
K. Ravinder Goud,
D. Linga Rao,
Dr.Y. Padmavathi.

Writ Petition No.21793 of 2005 & batch

Between:

The management of Adivasi Aided
Elementary School Adinarayanapuram,
Prakasam District.

… Petitioner

And

The State of Andhra Pradesh
Rep. by its Secretary for School
Education and others

… Respondents

Counsel for the petitioner: Ms. K.N.Vijayalakshmi

Counsel for the petitioners
in other connected cases: Sarvasri G. Vidyasagar,
M.V.S.Suresh Kumar,
S. Niranjan Reddy,
K.V.N. Bhupal,
Aka Venkataramana,
V. Mallik, A. Rama Rao

Counsel for respondents: Shri C.V. Mohan Reddy,
Advocate General, assisted
by Government Pleader for
School Education

December 29, 2006

Per G.S. Singhvi, CJ

By this judgment, we are disposing of the above noted appeal along with Writ Appeal Nos. 1579, 1585, 1643, 1672, 1681, 1726, 1746, 1759, 1932, 1941, 1942, 1943, 1944, 1979, 1987, 1992, 1993, 2006, 2022, 2034, 2069, 2155, 2165, 2166, 2167, 2180, 2185, 2186, 2187, 2249, 2274, 2285, 2289, 2319, and 2383 of 2005, 104, 148, 309 and 739 of 2006, Writ Appeal Nos. 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400 of 2006 and Writ Petition Nos.21793, 21794, 24718, 24983, 25215, 25481, 25482, 25522, 25524, 25527, 25583, 26323, 26328 of 2005 and 3330, 3450, 3451, 3531, 3550, 3575, 3587, 3594, 3599, 3643, 3660, 3821, 3822, 3823, 3837, 4240, 4241, 7031, 7068, 7069, 7070, 7120 of 2006.

The writ appeals have been preferred by the Government of Andhra Pradesh and its officers against the orders passed by the learned Single Judges whereby they declared that the ban imposed by the State Government vide Memo No.1280/ COSE/A2/2004-4 dated 20-10-2004 on the filling up of existing vacancies in the cadre of teachers is not applicable to the recruitment process already initiated by the management of the private schools for filling up the vacant aided posts of teachers and directed the non-petitioners (appellants herein) to allow the writ petitioners (respondents in the

writ appeals) to complete the process of selection.

In some of the writ petitions filed by the management of the private schools, prayer has been made for issue of a direction to the respondents to allow them to complete the process of recruitment initiated prior to 20-10-2004 and to strike down the process of rationalization undertaken by the authorities of the Education Department pursuant to interim order dated 31-10-2005 passed in Writ Appeal No.1578 of 2005. It has been further prayed that the respondents be restrained from transferring the teachers from one school to the other by declaring them surplus and they be directed to release the amount of salary payable to the teachers appointed against the aided posts. In some other writ petitions filed by the selected candidates, prayer has been made for issue of directions to the official respondents to enable the management of the private schools to appoint them against the existing vacancies in the cadre of teachers.

For the sake of convenience, we have noted the facts from the paper book of W.A. (SR) No.121938 of 2005 filed by the Government of Andhra Pradesh and others against order dated
9-3-2005 passed by the learned Single Judge in Writ Petition No.22804 of 2004 - **C.A.M. High School, Nellore v. Government of Andhra Pradesh and others** because, in furtherance of leave granted by the Division Bench on 7-3-2006, amended writ petition has been filed in that case and prayer has been made for quashing Memo dated 20-10-2004 and Rc.No.140/B2-1/2005 dated 3-11-2005 issued by the Director of School Education, Andhra Pradesh, Hyderabad (hereinafter referred to as 'the Director').

Respondent – C.A.M. High School, Nellore is a private aided school established by Samavesam of Telugu Baptist Churches. All the posts of teachers sanctioned for the school are aided posts. In

2004, the management of the school approached District Educational Officer, Nellore for grant of permission to fill up the existing vacant posts. Deputy Educational Officer, Nellore vide his proceedings in Rc.No.178/2004 dated 16-8-2004 submitted report to District Educational Officer, Nellore giving details of the total strength of students and vacancy position in the cadre of teachers. District Educational Officer, Nellore sent letter dated 17-9-2004 to Regional Joint Director of School Education, Guntur (for short, 'the Regional Joint Director') recommending grant of sanction to the management of the school to fill up the vacant aided posts. The latter issued proceedings dated 22-9-2004 whereby he granted permission for filling up eight vacant posts of teachers. For the sake of reference, that letter is reproduced below:

PROCEEDINGS OF THE REGIONAL JOINT DIRECTOR OF SCHOOL EDUCATION :: GUNTUR

PRESENT: SRI C.A.V. PRASAD, M.A. M.Ed.

Rc.No.4286/A5/2004-1 Date: 22-09-2004

Sub: Education – Secondary Education – Aided – C.A.M. High School, Nellore – Permission to fill up the vacant aided posts – Accorded.

Read: 1) DEO, Nellore Lr.R.No.2366/B6/2004, Dt.17.09.2004,
2) G.O.Ms.No.1, Education (PS-II) Dept., dt.1.1.1994.
3) G.O.Ms.No.41, WD & CW (Estt.) Dept. dt.1.8.1996.
4) G.O.Ms.No.100, Edn. (PS-I) Dept., Dt.16-8-2001
5) G.O.Ms.No.75, SE (PS-II) Dept., dt.23-9-2002 communicated in C & DSE's Procs., Rc.No.1000/B1-3/02, dt.24-9-2002.
6) G.O.Ms.No.91, SE (PS-II) Dept., dt.12.11.2002
7) G.O.Ms.No.8, SE (PS-II) Dept. dt.30-1-2003 communicated in C & DSE's Proc.Rc.No.1000/B1-3/02, dt.7-2-2003.
8) Procs.Rc.No.1000/B1-3/02, dt.30.5.2003 of the C & DSE, AP, Hyd.

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In the circumstances explained by the Dist. Educational Officer, Nellore and recommendation vide reference first read above, permission is hereby accorded to fill up the following vacant aided posts at C.A.M. High School, Nellore with the provisions of G.O.Ms.No.41 WD & CW Dept., dt.1-8-1996 and in due observance with the provisions of G.O.Ms.No.1, Education dt.1-1-1994, and also strictly following the procedure given in Rule-12 including sub-rule (6) of Rule-13 of

G.O.Ms.No.1, Education, dt.1-1-1994 read with guidelines issued in G.O.Ms.No.75, Edn., dt.23-9-2002 and Procs. Rc.No.1000/B1-3/02 dt.24-9-2002 of the C & DSE, A P, Hyderabad, and subject to pending outcome of judgment of the Hon'ble Supreme Court of India in the SLP filed against the orders in W.A.No.1519/1999.

S.No.	Category of Post	No. of Posts	Roaster
1	B.Ed. (Maths)	03	1 OC (W) 1/100 2 SC (W) A/B 2/100 3 OC (G) 3/100
2	B.Ed. (Physics)	01	O.C. (W) 1/100
3	Secondary Gr. Teacher	04	1 SC A/B (W) 2/100 2 OC (G) 3/100 3 BC (A) (W) 4/100 4 OC (G) 5/100

Any deviation in this regard will be viewed seriously.

It is also informed that the selection of approval will be made under sub-rule (8) & (9) of Rule-12 of G.O.Ms.No.1, Edn., dt.1-1-1994 and also as per the orders issued in G.O.Ms.No.100, Edn., (PS-I) Dept., Dt.16-8-2001.

Receipt of these proceedings should be acknowledged by return of post.

Sd/- C.A.V. Prasad,
REGIONAL JOINT DIRECTOR OF
SCHOOL EDUCATION, GUNTUR.

To
The Dist.Educational Officer, Nellore
Copy to the Dy. Educational Officer, Nellore.
Copy to the Correspondent, CAM High School, Nellore.

In furtherance of the permission granted by the Regional Director, the management of the school requested District Employment Officer, Nellore to forward the names of eligible persons. Simultaneously, letter dated 27-9-2004 was sent to District Educational Officer, Nellore to depute departmental nominee. After seeking some clarification from the management of the school, District Educational Officer, Nellore nominated

Shri M. Ramalingam, Deputy Educational Officer to participate in the process of selection. As a sequel to this, the management of the school issued an advertisement, which was published in two daily newspapers i.e. Eenadu and Andhra Jyothi for filling up eight vacant posts (3 - B.Ed. Assistants – Maths, 1 – B.Ed. Physics and 4 – SGBT teachers). During the currency of recruitment process, the

management of the school was informed that the government has issued Memo dated 20-10-2004 imposing ban on the filling up of the vacant posts and, therefore, the selection process cannot be completed. Thereupon, the management filed Writ Petition No.22804 of 2004 for grant of a declaration that the decision contained in Memo dated
20-10-2004 is not retrospective and the same cannot be applied to the ongoing process of recruitment meant for filling up the vacant aided posts for which permission has already been granted by the competent authority.

In the counter filed by Shri A. Krishna Rao, District Educational Officer, Nellore on behalf of the non-petitioners (appellants herein), it was not disputed that in furtherance of sanction granted by the competent authority i.e. the Regional Joint Director, Guntur, the management of the school initiated the process of recruitment of eight teachers and that Shri M. Ramalingam, Deputy Educational Officer was nominated was departmental representative on the Staff Selection Committee. Not only this, the deponent averred that the Correspondent of the School fixed the date of interview in consultation with Shri M. Ramalingam. According to Shri A. Krishna Rao, the process of selection could not be completed because Shri M. Ramalingam was promoted and posted as District Educational Officer, Chittoor. Thereafter, the management of the school suo motu fixed 14-12-2004 as the date of interview, but the same had to be stayed in view of the ban imposed by the State Government vide Memo dated 20-10-2004.

The learned Single Judge noted that by an order dated
9-12-2004 passed in Writ Petition No.22188 of 2004, a Coordinate Bench had declared that the ban imposed by the State Government was not applicable to the cases in which permission had been

accorded by the competent authority to fill up the vacant posts and held that the management of the school is entitled to fill up the vacant posts.

The appellants have challenged the direction given by the learned Single Judge by asserting that in view of the general ban imposed by the State Government, the management of the school cannot make recruitment on the basis of permission granted by the Joint Regional Director vide order dated 22-9-2004 and fresh permission is required to be obtained for filling up the vacant aided posts.

The factual matrix of the other appeals is by and large similar. The writ petitions filed by the management of different schools were allowed by the learned Single Judges and directions were issued to the appellants to allow the petitioners to complete the process of selection and appoint the selected candidates. In the writ appeals, the appellants have challenged the orders of the learned Single Judge on grounds similar to those contained in Writ Appeal (SR) No.121938 of 2005.

Before proceeding further, we deem it proper to notice some of the interim orders passed in Writ Appeal No.1578 of 2005 (Writ Petition No.15839 of 2005) – **The Govt. of A.P. and two others v. Sri Sevadas Vidyamandir High School, Hyderabad** because implementation of one such order dated 31-10-2005 has resulted in institution of a large number of writ petitions by the managements of the private schools. The details of the interim orders are as under:

1) On 8-9-2005, some of the appeals were admitted and ordered to be fixed on 31-10-2005.

2) On 31-10-2005, the cases were adjourned for three weeks and the following order was passed:

> "In the meantime, the Government is directed to

complete its process of rationalization and fill up all the posts, which are necessary to be filled up. If the posts are not filled up in the petitioner institutions where the need is already established, the establishments shall be at liberty to make appointments on their own after expiry of three weeks. There are some institutions where we are told that selections were made prior to 3-6-2003, which were permitted by the Director of Education as well. Those appointees shall continue to remain in service."

3) On 30-11-2005, the Court took cognizance of the statement made by learned counsel for respondent No.1 that the Government Pleader has supplied a paper book containing several orders and reports, which did not form part of the record of the writ petition and gave liberty to them to file supplementary affidavit and additional documents.

4) On 6-1-2006, the case was adjourned to 27-1-2006 with the direction that a comprehensive statement containing the details of the vacant posts available in different private recognized aided schools, the date on which requisition was sent to the competent authority, the date on which approval, if any, was granted by the competent authority, the date on which the meeting of the selection committee was held and the date on which recommendations were made be supplied to the Court.

5) On 3-3-2006, the learned Advocate General produced the original file containing the Minutes of the meeting held on 8-10-2004 and D.O. Letter dated 18-10-2004 pursuant to which paragraph 17 of the original Minutes was substituted. After going through the same, the Court directed the learned Advocate General to seek instructions from the concerned

persons and make a statement whether or not the amended paragraph 17 of the Minutes was recorded with the approval of the Chief Minister.

6) On the next date of hearing i.e. 7-3-2006, the learned Advocate General stated that the amendment was made in paragraph 17 of the Minutes recorded on 8-10-2004 with the approval of the Chief Minister and the Education Minister. He also supplied a bunch of papers to Shri M.V.S. Suresh Kumar, counsel representing some of the contesting parties. Thereupon, learned counsel for the respondents sought leave of the Court to amend the writ petition, which was granted. Since that order has bearing on the decision of some of the writ petitions, the same is reproduced below:

> "In furtherance of order dated 03-03-2006, learned Advocate General, on the basis of the instructions given to him, made a statement that the amendment was made in paragraph 17 of the Minutes recorded on 08-10-2004 at the approval of the Chief Minister and the Education Minister. The learned Advocate General has also supplied a bunch of papers to Shri M.V.S. Suresh Kumar, learned counsel representing some of the contesting parties.
>
> Shri Suresh Kumar and other learned counsel appearing for the contesting parties say that they may be given liberty to challenge the legality of Memo No.12080/COSE/A2/2004-4 dated 20-10-2004 and incorporate other amendments in one of the writ petitions out of which the present appeals arise.
>
> The learned counsel appearing in other cases state that they may be given liberty to make submissions on the basis of amendments carried out in one of the writ petitions and that they would not insist on seeking leave to amend other petitions.
>
> Although the learned Advocate General suggests that all the cases may be remanded to the learned

Single Judge for fresh adjudication, keeping in view the fact that the matters have remained pending before the Court for more than one year and some of the selected persons have not been able to get the benefit of selection, we deem it proper to entertain the request of the learned counsel for the writ petitioners for grant of leave to amend the writ petition with the corresponding liberty to the respondents to file counter to the amended petition.

Shri Suresh Kumar says that necessary amendments will be carried out in the writ petition within a period of two weeks from today.

In view of the statement made by the learned counsel, further hearing of the appeals and the writ petitions is adjourned to 12-04-2006 with liberty to the counsel for the writ petitioners in one of the cases to comprehensively amend the pleadings and also to challenge the legality of memo dated 20-10-2004, if so advised.

The amended petition be filed within two weeks, after supplying advance copy to the office of the Advocate General.

The non-petitioners in the writ petition, may file amended counter within next two weeks.

At this stage, some of the learned counsel for the writ petitioners submit that the Court may stay the end product of exercise undertaken by the Department for declaring the teachers surplus in terms of Rule 10 (12) of the 1993 Rules. According to them, if the posts are filled up by appointing surplus teachers, the selected candidates will suffer irreparable injury.

The learned Advocate General submits that exercise for determination of the surplus hands was undertaken in compliance of the direction given by the Court in the month of October, 2005 and orders for posting of the surplus teachers were also passed sometime in November 2005, but the Management of the private aided schools did not implement the orders passed by the competent authority. He submits that the

rights of the selected candidates, as and when determined by the Court, will be appropriately respected by the Government and therefore, the Court may not stay the implementation of the orders issued as a result of the exercise undertaken by the Department.

We have thoughtfully considered the respective submissions and are of the view that, at this stage, it will not be in the interest of either of the parties to stall the process initiated by the Department for determination of the surplus hands. Therefore, we direct that there shall be no stay on the exercise undertaken by the Department. There shall also be no stay in transfer of teachers against the vacant posts but the exercise of rationalization and transferring the surplus hands shall remain subject to the final adjudication of appeals and writ petitions and the rights of the selected teachers shall not, in any manner, be adversely affected on account of implementation of the policy of rationalization. This would necessarily mean that if the writ petitioners succeed, then the transferred teachers will have to be displaced from their posts in order to make room for the selected hands.

The above direction would remain subject to the condition that the transferred teachers shall not be compelled to join their respective posting till 23-04-2006 because, the examinations in various schools are still going on and transfer of teachers may adversely affect the careers of the students. This would necessarily mean that after 23-04-2006, the transferred teachers shall have to join at their respective places, failing which the competent authority shall be free to take appropriate action in accordance with law."

In furtherance of the leave granted by the Court, amended petition was filed in Writ Petition No.22804 of 2004 – C.A.M. High School, Nellore v. Government of Andhra Pradesh and others to challenge the legality and vires of Memo dated 20-10-2004.

In the affidavit filed by Shri Y.T. Mitra, it is averred that Memo

dated 20-10-2004 is violative of Rule 12 of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (for short, 'the 1993 Rules') and G.O.Ms.No.75, School Education (PS-2) Department, dated
23-9-2002. Another plea taken by the petitioner is that Memo dated 20-10-2004 does not truly reflect the decision taken in the meeting held on 8-10-2004 under the Chairmanship of the Chief Minister inasmuch as, even though no decision was taken to ban recruitment against the existing vacancies in the cadre of aided posts, the Minutes of the meeting recorded by the concerned authority were amended on 19-10-2004 at the instance of Principal Secretary (W & P) without the permission/approval of the Hon'ble Chief Minister or the Hon'ble Education Minister. The petitioner has also assailed the exercise undertaken by the department for rationalization by contending that the same is contrary to the provisions contained in the 1993 Rules.

We may now advert to the steps taken by the authorities of the Education Department in furtherance of interim order dated 31-10-2005 and also notice factual matrix of some of the writ petitions filed for questioning the rationalization exercise undertaken by the department. On receipt of the copy of order dated 31-10-2005, the Director addressed letter dated 3-11-2005 to the Regional Joint Directors and District Educational Officers requiring them to take up the rationalization work in private aided schools as per the norms prescribed by the State Government vide G.O.Ms.No.103, dated 5-8-2005. The District Educational Officers were directed to constitute teams consisting of three members comprising Head Masters/ Lecturers of training colleges. Each team was required to visit 20 aided schools within one week and submit report to the District

Educational Officer in the prescribed formats – I, II and III. The latter was required to complete the work of rationalization by 14-11-2005. In compliance of these directions, the District Educational Officers constituted teams for inspection of various private aided schools and declared some teachers surplus. They also issued consequential orders on 17th, 19th and 20th November, 2005 for shifting the surplus teachers. (Xerox copies of these orders have been included in separate paper book filed by the learned Advocate General).

Writ Petition No.25215 of 2005 – Private Recognised Aided Schools Managements Association, Vijayawada and 16 others v. Government of Andhra Pradesh and another

In this petition, the petitioners have challenged G.O.Ms.No.103, dated 5-8-2005 and instructions issued by the Director of School Education vide letter dated 3-11-2005. They have claimed that the staff of private schools can be declared surplus in terms of Rule 10 (17) of the 1993 Rules only if there is a fall in strength for two successive academic years whereas G.O.Ms.No.103, dated 5-8-2005 provide for amalgamation of schools, identification of surplus staff and posts and shifting and transfer of staff without any tangible ground. In paragraphs 12 and 13 of the affidavit filed by him, Shri M. Anjaiah, Secretary of petitioner No.1 association, has averred as under:

> "12. On the basis of the instructions given by the respondents, the DEOs have conducted a perfunctory and hasty enquiry and have sought to submit reports in respect of all schools in the State within a period of three days. No proper care was taken for ascertaining the total strength of students of different schools at different levels for two consecutive years and also the details regarding the staff of the respective schools work in un-aided, yet recognized posts were not calculated. In fact, on account of this arbitrary procedure that has been followed, the

respondents are also not verifying and scrutinizing the records consistently submitted by each of the schools admitted to grant-in-aid scheme whereunder the strength of the students and the staff position are submitted on a monthly basis for the purpose of seeking the release of grant-in-aid funds.

13. In addition to this periodic inspections are also conducted on behalf of the DEOs in respect of various schools which reports also disclose the students strength and position in respect of the various levels of each school. These reports have also not being considered at all. There are also audit reports submitted in respect of all the high schools which also contain all the details concerning the staff and the students of the concerned school. Without referring to any of these records and also the registers maintained with respective schools, the team only resorted to an arbitrary head count of the students attending on a particular date and on the basis of such inspection submitted their reports for transferring out posts and staff."

In the counter-affidavit filed by him, Dr.P. Krishnaiah, Secretary to Government, School Education Department has claimed that G.O.Ms.No.103 dated 5-8-2005 was issued because, while the prescribed teacher-pupil ratio is 1 : 40, there are more number of teachers than required. According to Shri Krishnaiah, the actual teacher - pupil ratio in the government school is 1 : 32 whereas in the private institutions, including unaided institutions, the teacher – pupil ratio is as follows:

Primary Schools	-	1 : 35.45
Upper Primary Schools	-	1 : 24.17
High School	-	1 : 24.49

Shri Krishnaiah has given the details of the budget allocation made in the last five years for payment of salaries to the staff of the aided schools and claimed that even though the government is spending huge amount, the managements of private schools have been

making appointments in clear violation of the 1993 Rules without any requirement and, therefore, it became necessary to ban recruitment against the vacant aided posts. In paragraphs 22 and 23 of his affidavit, Shri P. Krishnaiah has averred as under:

> "22. I submit that the allegation that the exercise of rationalization was done in a perfunctory manner is also not correct. The actual availability of students was taken into account and a sufficient buffer was also given to take care of students who might have been absent as on the date of the visit of the inspection teams. In Director's Proc.No.140/B2-1/2005, dated 3-11-2005, instructions issued that to take up the rationalization work as per the norms prescribed in G.O.Ms.No.103, dated 5-8-2005 and also as per the guidelines issued below:
>
> 1. The District Educational Officer should constitute number of teams consisting three members of each team with HM.Lecturers of training colleges.
> 2. Each team should visit 20 aided schools within a week and submit the report to the DEO in the prescribed format-I, II and III.
> 3. Each member of the tam and Assistant Director should sign in the proforma with the name and designation with seal.
> 4. the DEO should take up rationalization work on war foot basis and it should be completed by 14.11.2005 positively.
>
> 23. I submit that in an exercise of this nature, which was done under the directions of the Hon'ble Court within three weeks engaging 1813 special teams consisting 3 members with H.M./Lecturers of Training Colleges in the entire State, it may not be possible to achieve hundred per cent accuracy. The aberrations, if any, in the rationalization exercise can be rectified, if they are brought to the notice of the Director of School Education, by way of an Appeal under Section 89 of the A.P. Education Act. As a matter of fact, several managements have already filed such Appeals, and the

same are being processed in accordance with law by the Director of School Education."

Along with his affidavit, Shri Krishnaiah has annexed a chart to show the number of the aided posts as also the surplus posts.

Writ Petition No.24983 of 2005 – K. Pitchi Reddy and 4 others v. The Secretary to Government, School Education Department, and 3 others.

In this petition, the petitioners have challenged letter dated 3-11-2005 issued by the Director constituting the committees for rationalization work in private aided schools by contending that the same is ultra vires the provisions contained in G.O.Ms. No.103, dated 5-8-3005 and Rule 10 (17) of the 1993 Rules. The plea of the petitioners is that respondent No.3 cannot issue instructions in violation of the policy framed by the State Government for rationalization of staff. They have relied on order dated 10-11-205 passed by the learned Single Judge in Writ Petition No.24024 of 2005 – Kadapa District Private Recognised Aided Schools Managements Association, Kadapa v. Director of School Education, Andhra Pradesh and two others, and pleaded that in view of that order, the exercise undertaken by respondent No.2 for rationalization of staffing pattern is liable to be declared nullity.

Writ Petition No.4241 of 2006 – J. Madhava Reddy v. The Government of Andhra Pradesh and 5 others.

In this petition, the petitioner has prayed for quashing the proceedings dated 23-10-2005 issued by the District Educational Officer and Secretary, District Rationalisation Committee, West Godavari District and Memo dated 10-2-2006 whereby the State Government cancelled the instructions issued vide Memo dated 5-8-2004 and 10-2-2005. He has further prayed for issue of direction

to the respondents to approve his appointment as teacher with effect from 10-6-2003. Paragraph 5 of the affidavit filed by the petitioner reads as under:

> "5. It is also further submitted that the 1st respondent herein issued Memo No.9430/SE-PS-II/2005-08 dt.10-2-2006 cancelling the government Memo No.3989/PS-II/2004-05 sdt.5-8-2004 and 10-2-2005 on the ground that rationalization has been completed and it was found that 350 posts are surplus due to steep decrease in the student strength. It is humbly submitted that the entire procedure adopted for rationalization as per G.O.Ms.No.103,
> dt.5-8-2005 is arbitrary and unjust. It is submitted that instead of taking into the student strength of the previous years, the authorities made head count on the day they visited the school and without notice to the correspondent arrived the student strength without referring to the school registers. It is submitted that the head count of the student on a particular day is not contemplated under G.O.Ms.No.103, dt.5-8-2005 and G.O.Ms.No.1, dated
> 1-1-1994 which prescribe that the strength of the previous years has to be taken into consideration. It is also submitted that as memo dt.10-2-2006 has cancelled the previous memos dt.5-8-2004 and 10-2-2005 of the government, I am advised that the said memo is illegal and arbitrary for the reasons which have been submitted."

Writ Petition No.7031 of 2006 – Jelli Rajini Rani v. The Government of A.P., Education Department and 4 others.

The petitioner – Rajani Rani has prayed for quashing Memo dated 10-2-2006 issued by the government and the rationalization process adopted by District Educational Officer and Secretary, District Rationalisation Committee, Prakasam by contending that the same is violative of the policy contained in G.O.Ms.No.103, dated 5-8-2005. She has also prayed for issue of a direction to respondent Nos.2 and 3 to approve her appointment with effect from 12-6-2003.

In paragraph 5 of her affidavit, the petitioner has averred that instead of taking into consideration the student strength of the previous years, the authorities made head count on the day of their visit and that too without giving notice to the Correspondent of the school.

Writ Petition No.7120 of 2006 – Y. Venkata Reddy v. The Government of A.P. rep. by Secretary, School Education Department and two others.

In this petition, petitioner – Y. Venkata Reddy has prayed for grant of a declaration that Memo dated 20-10-2004 is not applicable to Gurukula Vidyalaya High School, Mahanandi, Kurnool District. He has further prayed for issue of a direction to the respondents to decide his representation dated 25-11-2004 and admit seven teaching and two non-teaching posts into grant-in-aid.

Writ Petition No.21794 of 2005 – The Management of RCM High School v. The State of A.P. rep. by its Secretary, Education Department and two others.

In this petition, the management of R.C.M. Primary School has prayed for issue of a direction to the respondents to release salary for the post held by Smt.N.G. Jayanthi Kumar who was appointed on the recommendations of the Staff Selection Committee.

Writ Petition No.25481 of 2005 - Andhra Evangelical Lutheran Church, Guntur v. Government of A.P., School Education Department and six others.

In this petition, Andhra Evangelical Lutheran Church, Guntur has prayed for quashing G.O.Ms.No.103 dated 5-8-2005 and letter dated 3-11-2005 issued by the Director, and the consequential action taken for transfer of teachers to the institution as a result of rationalization.

Writ Petition No.25522 of 2005 - Smt. St. Mary Fathima High

School, Kurnool v. Government of A.P. rep. by its Principal Secretary, School Education Deprtment and five others.

In this writ petition, the petitioner has prayed for quashing proceedings dated 19-11-2005 issued by District Educational Officer, Kurnool for posting of respondent No.6 on the post of Telugu Pundit Grade-II. The petitioner has also prayed for striking down G.O.Ms.No.103, dated 5-8-2005 on the ground that the same is ultra vires the provisions of the 1982 Act. The petitioner has relied on the judgment of the Division Bench in Writ Appeal No.604 and 950 of 1999 and averred that the respondents cannot withhold approval of the appointments made after following the relevant statutory provisions.

Writ Petition No.3330 of 2006 – Church of South India High School, Karimnagar v. Government of Andhra Pradesh.

In this petition, the petitioner has prayed for quashing three orders dated 14-2-2006 issued by District Educational Officer, Karimnagar transferring three teachers from other schools without regard to the subject required. In paragraph 5 of the affidavit filed by him, Shri S. John Theodore, Bishop and Chairman of Diocese Education Committee, Church of India, Diocese of Karimnagar, has averred as under:

> "5. It I submitted that while so, a batch of writ petitions were filed before this Hon'ble Court, seeking filling up of the existing vacancies and the said writ petitions were allowed and subsequently the respondent authorities have preferred Writ Appeal No.1578/2005 and batch and this Hon'ble Court on 31-10-2005 passed an order directing the authorities to complete the rationalization and to fill up the vacancies out of the surplus. I submit that in pursuance of the said orders, the1st respondent issued G.O.Ms.No.62, dt.31-1-2006 according permission to fill 123 aided posts which were already permitted by the competent authorities to the management of

various schools. It is submitted that from out of the posts mentioned in the G.O., the posts of School Assistant (Maths), Hindi Pandit Grade-II and Record Assistant one post each was sanctioned to the petitioner's institution. It is relevant to submit here that subsequently the 3rd respondent by his proceedings directed the petitioner management to admit the respondent Nos.5 to 7 herein and transferred the 4th respondent from our school to another school. In fact, the services of the 4th respondent is very much required to our school, apart from the above, the respondent No.5 who is a School Assistant (Maths) relates to English Medium, but our institution requires the School Assistant (Maths) Telugu Medium, and whereas the post of Secondary Grade Teacher is not yet sanctioned in terms of G.O.Ms.No.62. In view of the above directing the petitioner to admit the respondent Nos.5 to 7 and further relieving the 4th respondent from our institution is wholly illegal, arbitrary and improper. Hence, it is just and necessary to direct the respondents not to effect the transfers of the petitioner Nos.4 to 7, otherwise the petitioner's school would be put to severe hardships, as the 3rd respondent has directed the petitioner's institution to admit the unconcerned staff, which would ultimately cause adverse effect to the students."

Writ Petition No.3531 of 2006 – D.V. Ramanamurthy and four others v. The Government of A.P. represented by Principal Secretary, Education Department, Hyderabad and two others.

In this petition, the petitioners have prayed for quashing proceedings dated 31-1-2006 and 1-2-2006 issued by the Director and District Educational Officer, Srikakulam for their transfer by being treated surplus.

The above noted writ petitions are representative of issues raised in the other writ petitions. In none of these petitions, the respondents have filed counter-affidavit. Therefore, we shall decide the writ petitions by treating the averments contained in the affidavits filed by or on behalf of the petitioners as correct.

Arguments:

Shri C.V. Mohan Reddy, learned Advocate General emphasized that the State Government imposed ban on the creation of new posts and appointment on the existing vacancies because large number of teachers in the private aided schools are surplus and the State Government is burdened with huge liability in the form of their salary etc. without any tangible benefit to the student community. He submitted that the management of private the schools had initiated process of recruitment without complying with the mandatory conditions incorporated in Rule 12 of the 1993 Rules and, therefore, it became necessary to ban further recruitment. He then submitted that the State Government is the only authority competent to sanction recruitment against the vacant posts, but, without even submitting applications to the competent authority, the management of private schools started the process of selection, which had to be stopped. Learned Advocate General also pointed out that in large number of cases, recruitment was made without constituting Staff Selection Committee envisaged under Rule 13 of the 1993 Rules and / or without associating the nominee of the District Educational Officer, but all this was ignored by the learned Single Judges while declaring that the decision contained in Memo dated 20-10-2004 is not applicable to the ongoing process of recruitment. Shri C.V. Mohan Reddy also defended the exercise of rationalization undertaken by the District Educational Officers in furtherance of interim order dated 31-10-2005 and argued that the respondents cannot take any exception to the absorption of surplus teachers as a condition precedent to the grant of permission for recruitment against the existing vacancies. He then submitted that if any deficiency is pointed out in the process of rationalization, then remedial action will

be taken by the authorities of the Education Department.

Shri M.V.S. Suresh Kumar and other learned counsel appearing for the respondents in the writ appeals and petitioners in the writ petitioners argued that the decision contained in Memo dated 20-10-2004 is not retrospective and, therefore, the learned Single Judges did not commit any error by declaring that the same is not applicable to the process of recruitment initiated by the management of the private schools pursuant to the permission granted by the competent authorities for filling up the vacant aided posts. Learned counsel submitted that the procedure adopted by the management of the private schools for recruiting teachers etc. is in consonance with the 1993 Rules and the appellants cannot take any exception to the same or invoke the ban contained in Memo dated 20-10-2004 for stultifying the process of selection. Shri Suresh Kumar further argued that even if Memo dated 20-10-2004 is treated applicable to the ongoing process of recruitment, the directions given by the learned Single Judges cannot be faulted because the management of the schools had taken permission from the competent authorities specified in Rule 3 of the 1993 Rules. He submitted that the definition of the term 'competent authority' contained in Section 2 (12) of the 1982 Act and Rule 2 (e) of the 1993 Rules is not relevant for deciding the legality of the process initiated by the management of the private schools for making appointment against the existing vacant aided posts because, in each case, permission had been obtained from the District Educational Officer or the Regional Joint Director, who are competent to grant permission for filling up the vacant aided posts. Learned counsel further argued that if the decision contained in Memo dated 20-10-2004 is interpreted as putting a restraint on the right of the management to make recruitment in accordance with rules, then the same is liable to be declared ultra

vires the statutory rules. Shri A.Venkata Ramana, learned counsel for some of the petitioners emphasized that selection for appointment of teachers against the aided posts had been made after seeking permission from the competent authority and, therefore, Memo dated 20-10-2004 could not have been made basis for stultifying the appointment. Shri N. Subba Rao argued that the ban imposed by the government is violative of Article 21A of the Constitution because the same would result in depriving the students of primary and upper primary schools of their fundamental right to receive education. Shri Suresh Kumar and other learned counsel then referred to G.O.Ms.No.75, dated 23-9-2002 and argued that the permission given by the 'competent authorities' defined in Rule 3 (e) of the 1993 Rules cannot be nullified by imposing ban on the recruitment of existing vacancies. Learned counsel appearing for the petitioners in the writ petitions assailed the rationalization process undertaken by the authorities of the Education Department in furtherance of instructions issued by the Director vide letter dated 3-11-2005 by arguing that the same is per se violative of the provisions of the Andhra Pradesh Grant-in-Aid Regulation Act, 1988 (for short, 'the 1988 Act') read with the Andhra Pradesh Education Act, 1982 and the 1993 Rules. Shri S. Niranjan Reddy referred to the pleadings of Writ Petition No.25215 of 2005 and some other cases and argued that the entire exercise undertaken by the departmental authorities should be declared as farce because the teams constituted by the Director did not give notice to the Correspondent or management of the schools and made recommendations only on the basis of attendance of the students on the date of inspection. Learned counsel then argued that clauses (3), (4) and (5) of G.O.Ms.No.103, dated 5-8-2005 are liable to be struck down because the same are contrary to Rule 10 (12), (17) and (18) of the 1993 Rules. Shri

Niranjan Reddy also pointed out that in some of the cases, the committees constituted by the Director had visited the schools when it was heavily raining and most of the students had not come to attend the classes. He submitted that the recommendations made on the basis of such inspection could not be relied for the purpose of declaring the teachers surplus in one school and transferring / absorbing them in other school and that too without regard to the subject requirement of the transferee school.

We have considered the respective arguments. Two questions, which require determination by the Court are:

1) Whether the decision taken in the meeting held on 8-10-2004 under the Chairmanship of the Chief Minister has the effect of imposing total ban on the recruitment of teachers against the aided posts except with the permission of the State Government and whether Memo dated 20-10-2004 is ultra vires the 1993 Rules?

2) Whether the exercise of rationalization undertaken by the authorities of the Education Department in furtherance of interim order dated 31-10-2005 passed by this Court is legally tenable and whether instructions contained in G.O.Ms.No.103 dated 5-8-2005 is violative of Rule 10 (17) of the 1993 Rules and is liable to be quashed on that ground?

Before dealing with the above noted questions, we deem it proper to take cognizance of the previous litigation which has bearing on the decision of the writ appeals.

The record produced by the learned counsel for the parties shows that after almost three years of the framing of the 1993 Rules, the State Government issued G.O.Ms.No.275, Finance & Planning

(FW.SMPC) Department, dated 14-12-1995 imposing a restriction on filling up of the posts of all categories except with the prior permission of the Government in the Finance and Planning (Finance Wing) Department. After two years and eight months, the State Government issued Memo No.5-S/1491/ 451/SMPC/98 dated 3-8-1998 whereby the provisions contained in G.O.Ms.No.275, dated 14-12-1995 were made applicable to the grant-in-aid schools.

Kavitha More and five others who were selected for appointment as teachers in L.M.S. High School, Begum Bazar, Hyderabad (a private aided school), but were denied appointment in view of the instructions contained in G.O.Ms.No.275 dated 14-12-1995 and Memo dated 5-8-1998 filed Writ Petition No.6380 of 1999 for grant of a declaration that the restriction imposed by the State Government is ultra vires the 1993 Rules. By an order dated 28-4-1999, the learned Single Judge allowed the writ petition and directed the respondents to approve the selection of the petitioners.

The management of the private aided schools also filed Writ Petition Nos.28770, 32362, 32384, 33195 and 35308 of 1998 questioning G.O.Ms.No.275 dated 14-12-1995 and Memo dated 5-8-1998 on the ground that the same are ultra vires the 1993 Rules. They pleaded that the selections made against the aided posts could not be frustrated by applying the restriction contained in G.O.Ms.No.275 dated 14-12-1995. The learned Single Judge referred to order dated 28-4-1999 passed in Writ Petition No.6380 of 1999 and directed the concerned respondents to approve the selections made by selection committees of the respective private aided educational institutions for filling up the vacant posts. However, liberty was given to the Government to amend or modify or issue another order to make the provisions of G.O.Ms.No.275 dated 14-12-1995 applicable to the private aided educational institutions.

Writ Appeal No.1426 of 1999 – The Government of A.P. v. D.M.R. Elementary School, Padi Sonpet, Tenali, Guntur District and batch filed against the order of the learned Single Judge were dismissed by the Division Bench on

1-10-1999. The relevant extracts of the judgment of the Division Bench are reproduced below:

> "The respondents are the aided schools. We fail to comprehend as to how the G.O.Ms.No.275 can be made applicable to the schools by simple administrative instruction which undisputedly is running contrary to the statutory rules framed and issued vide G.O.Ms.No.1 dated 1.1.1994. The respondents are the aided schools and the posts in question do not require allocation of budget as already budget has been sanctioned for the said posts. And those posts are created only on the eve of retirement/death of the person or it is created due to tendering of resignation by the person holding that post. That is why, in any eventuality, that is to say, either when the post falls vacant or when it is filled up, the question of excess manpower does not arise.
>
> In view of the observations made above and the admitted fact to the effect that G.O.Ms.No.275 runs contrary to G.O.Ms.No.1, we find no force in the contention of the learned counsel for the appellants that all the institution/schools which are getting grant-in-aid from the Government are required to process the applications for filling up of the posts through the Finance Department and they have to fill up the vacancies only after getting the prior permission from the Finance Department. The posts falling vacant are entirely covered by the provisions of G.O.Ms.No.1. The learned single Judge has kept it open for the appellants to suitably amend and modify the statutory rules in accordance with law and not to make them applicable by executive instructions. In view of the above observation, we find no error in the finding of the learned single Judge. Affirming the same, the appeals are dismissed. No costs."

By taking cognizance of the above mentioned orders of the

Single Benches and judgment of the Division Bench, the State Government added sub-rule (2A) to Rule 12 of the 1993 Rules and introduced the requirement of obtaining clearance from the District Level Surplus Manpower Cell. That rule envisaged that if there are suitable candidates in the surplus manpower cell of the district, then they should be absorbed against the vacancies as per the said requirement and if no suitable candidates are available, then action to fill the vacancies could be taken by the recruiting agencies and competent authorities as per the 1993 Rules without further clearance from the Government and Finance Department. Simultaneously, sub-rule (9) of Rule 12 was amended rendering appointments made in violation of Rule 12 as null and void. The aforesaid amendments were circulated vide G.O.Ms.No.76, Education (SE/PS-I) Department, dated

2-11-1999. That G.O. was challenged in Writ Petition No.11750 of 2000 and batch – **Modern H i g h School, Zamisthanpur, Musheerabad, Hyd. v. Government of A.P.**[1]. A Division Bench of this Court struck down the amendment as a whole by observing that the same is violative of Article 30 (1) of the Constitution. Paragraph 10 of that judgment reads as under:

> "10. Now, what is done by amendment of rule 12 is that the power of appointment itself is taken away by the State Government from the managements of the minority institutions and even the Government has restricted its powers of appointment only to the extent of surplus staff. The net result would be that, neither the State Government nor the institutions would have the choice to take up the best amongst the available qualified candidates. Ex facie the amendment is ultra vires to Article 30 (1) of the Constitution of India and therefore is struck down."

Faced with the repeated reversals in the Court, the State

Government issued fresh policy instructions to fill up the vacant aided teaching posts. The same were circulated by G.O.Ms.No.75, School Education (PS-2) Department, dated

23-9-2002. For the sake of convenient reference, paragraphs 5, 6 and 7 of that G.O. read as under:

> "5. In view of the above reasons, Government after careful examination, have taken a policy decision on the issues relating to (i) filling up of vacant aided posts and (ii) admission of Grant-in-aid for the new posts as per provision of the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regualation) Act, 1988 (Act 22/1988). Accordingly, in partial modification of the orders/instructions issued in the references 3rd to 6th read above, so far as Private Aided Educational Institutions (i.e. Primary, Upper Primary and High Schools) are concerned, the following orders are issued:-
>
> i) To fill up all the existing vacant Grant-in-aid teacher posts and Non-teaching staff by the managements duly following the rule 12 (except sub-rule 6) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of School under Private Managements) Rules, 1993 issued in G.O.Ms.No.1/ Education (PS-2) Department, dated 01-01-1994.
>
> ii) While filling up the posts under Grant-in-Aid, emoluments and pay scales shall be in accordance with the Government pattern i.e. as per the orders issued in the reference 7th read above and the Grant-in-Aid institutions shall follow the established recruitment procedure as prescribed in rule 12 (except sub-rule 6) of the Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of School under Private Managements) Rules, 1993.
>
> iii) All the teaching posts eligible as per the provision of the Andhra Pradesh Private Educational Institutions Grant-in-Aid (Regulation) Act, 1988 (Act 22/1988) shall be placed before the Grant-in-Aid committee i.e., High Level Committee under the Chairmanship of Commissioner and Director of School Education, Hyderabad.

6. Where the managements of Private Aided Institutions have already obtained permission from the competent authorities and filled up the vacant posts duly following the recruitment procedure, the competent authorities concerned shall approve such appointments forthwith and to issue necessary orders in the matter. However, they should follow the payment procedure as prescribed in the G.O. 7th read above.

7. Extreme care may be taken in respect of the qualified un-aided staff who were appointed against the sanctioned posts and as per the recruitment procedure, and whose appointments were approved by the competent authorities for consideration of absorption in the respective posts duly following the seniority, qualifications etc., in accordance with law. In such cases, the following guidelines shall also be followed:-

i) The posts should have been sanctioned by the competent authority as per the teacher pupil ratio.

ii) The candidate must possess the qualifications as prescribed for each category of post for Government / Local Body Teachers.

iii) If more than one candidate is working in a sanctioned un-aided post of same cadre and all of them satisfy the conditions prescribed, absorption in the vacant aided posts shall be done as per seniority in un-aided posts.

iv) Where there is a feeder category for promotion, the vacant aided posts shall be filled in the ratio of 2 : 1 i.e. 1st and 2nd posts by promotion and 3rd by direct recruitment / absorption.

v) These guidelines are applicable for teachers already working in unaided posts and shall not be applied for future appointees in unaided posts.

vi) In future there shall not be any approval by the department for recruitment to un-aided post and hence no question of any absorption in future. The management may fill up unaided posts, if they require as per the staffing pattern and teacher pupil ratio with their own funds."

Statutory Provisions:

Andhra Pradesh Education Act, 1982

2. Definitions:

(12) "competent authority" means any person, officer or authority authorised by the Government by notification to perform the functions of the competent authority under this Act for such area or for such purposes as may be specified in the notification;

Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control) Rules, 1993:

2(1)(b). "Educational agency" means, the Society/Trust/ Association including Endowment Board/Wakf Board and Christian Mission (Church/Diocese or congregation) and the like, sponsoring/managing/running the schools;

2(1)(e). "Competent Authority" means the authority who is vested with the powers of granting permission and/or recognition to schools;

3. Competent Authorities:

For the purpose of these rules, the following shall be the competent authority:

	Category of Schools	Competent Authority
1)	a) Pre-Primary, Primary and Upper Primary Schools b) Oriental Schools, Hindi Patasalas, Hindi Vidyalayas, Sanskrit Patasalas and Special Schools.	District Educational Officer
2)	Secondary Schools	Regional Joint Director of School Education

10. Conditions Governing permission/Recognition:

In addition to specific conditions that may be prescribed in individual cases, every permission/ recognition granted to the schools under these rules shall be subject to the following conditions:

…

(12). that the Teacher pupil ratio in respect of the pre-primary schools shall not exceed 1 : 20 and in respect of all other Schools, the ratio shall not exceed 1 : 40.

(17). that when private aided Schools are forced to be closed down for any reason or whenever the management of the School goes out of the way to remove any of its staff members or whenever there is fall in strength in a private aided school for two consecutive academic years, the Competent Authority may transfer the staff along with the posts to any other needy private aided or Local Body School within the district;

(32). that the educational agency shall carry out all the instructions issued by the Government and other competent departmental authorities relating to making of admission of students, appointment of staff and also relating to other academic and administrative affairs, in the interest of academic standards and smooth functioning of the institutions, from time to time;

12. Appointment of staff:

(1). The educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by Government from time to time;

(2). All the staff teaching as well as non-teaching shall be recruited through staff Selection Committee to be constituted by the educational agency in accordance with these rules;

(3). All the posts shall be advertised in at least two News Papers having large circulation of which one shall be in Telugu;

(4). All educational institutions receiving grant-in-aid from Government shall notify vacancies to the Employment Exchange and in addition, advertisements in the News Papers, that they shall also be required to call the candidates sponsored by Employment Exchange for test and interview provided that the persons applying to the post in response to the advertisement in the news papers should have got registered their name in any Employment Exchange in the State.

(5). Aided Schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O's nominee a reasonable opportunity of being present. The selection however, shall not be vitiated only on the ground of absence of D.E.O's nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency;

(8). All appointments made either teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose, the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within two months from the date of receipt of the proposals in respect of unaided posts, the approved shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency;

13. Staff Selection Committee:

1) The Staff Selection Committee shall consist of the following persons as members:
   a) President of educational agency or his nominee;
   b) Correspondent/Secretary/Manager of the Institutions;
   c) Headmaster/Principal of the Institution;
   d) Two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer. Of these, at least one should be the Head Master of a recognized school;
   e) In respect of aided schools, an officer of the Education Department not below the rank of Deputy Educational Officer nominated by the District Educational Officer.
2) The President of the educational agency can either be the Chairman; or nominate one of the members of the Staff Selection Committee to be the Chairman;
3) The quorum for the Staff Selection Committee meetings shall be four.

The additional papers filed by the learned Advocate General shows that in the High Level Meeting conducted by the Chief Minister on 8-10-2004, various decisions were taken including the one relating to the Education Department. Paragraph 17 of the Minutes of that meeting recorded by Principal Secretary (School Education) reads as under:

> "The necessity of continuance of grant-in-aid posts was discussed in detail. It was suggested by Secretary (Services) that it may not be expedient to wind up the posts which are already in existence, simply for the reason as some of these institutions which are getting grant-in-aid are doing better service to the public. The CM said that in that case, there should not be any necessity to create new posts of grant-in-aid."

These Minutes bear the stamp of the office of the Chief Minister dated 14-10-2004 and Principal Secretary

to Government, Education (SE) dated 15-10-1994. The same were circulated to various departments. Thereafter, Principal Secretary (W & P) recorded note dated 19-10-2004, which reads as under:

> "Kindly refer to the Minutes of the High Level Meeting conducted by Hon'ble C.M. At Point No.17, the issue ofgrant-in-aid posts was discussed. The decision was that no new posts of Grant-in-aid would be created and the existing vacancies will also not be filled up, except what has been specifically authorized since there is a General ban on recruitment except for the posts, for which permission was specifically granted by the Government. The Minutes may kindly be amended accordingly."

It is not borne out from the record whether the above reproduced note was put up before the Hon'ble Chief Minister or the Education Minister, but this much is evident that in furtherance of the said note, Memo No.12080/COSE/A2/2004-4 dated 20-10-2004 was issued for replacing paragraph 17 of the Minutes recorded on the basis of the meeting held on 8-10-2004. The amended paragraph 17 reads as under:

> "No new posts of Grant-in-Aid would be created and the existing vacancies will also not be filled up, except what has been specifically authorized since there is a General ban on recruitment except for the posts for which permission was specifically granted by the Government."

We may have delved deep into the issue whether the note dated 19-10-2004 recorded by Principal Secretary (W & P) and consequential Memo dated 20-10-2004 could be treated as the decision taken in the meeting held on 8-10-2004 under the Chairmanship of the Hon'ble Chief Minister and whether Memo dated 20-10-2004 was issued in accordance with the rules of business framed under Article 166 of the Constitution of India, but in view of our conclusion that the said Memo does not have the effect of stultifying

the process of recruitment initiated by the management of the private schools prior to 20-10-2004, we do not consider it necessary to finally pronounce on this issue.

An analysis of the provisions reproduced above shows that the term 'competent authority' defined under Section 2 (12) means any person, officer or authority who is specifically authorized by the government by notification to perform the functions of the competent authority for such area or for such purposes as may be specified in the notification. Section 2 (1)(e) of the 1993 Rules defines the 'competent authority' as an authority, which is vested with the powers of granting permission and/or recognition to schools as envisaged under Rule 10.

Rule 3 lays down that for the purposes of the 1993 Rules, the specified authorities shall be the competent authorities. For Pre-Primary, Primary and Upper Primary Schools and Oriental Schools, District Educational Officer is the competent authority and for Secondary Schools, Regional Joint Director is the competent authority. Rule 10 (12) lays down that the teacher-pupil ratio in respect of pre-primary schools shall not exceed

1 : 20 and in respect of all other schools, the ratio shall not exceed 1 : 40. Clause (17) of Rule 10 empowers the 'competent authority' to transfer the staff along with the posts to any other needy private aided or local body school if any particular school is forced to close down or when there is a fall in the strength for two consecutive academic years. Rules 12 and 13 enumerate the steps to be taken for making appointment of staff by the management of the private aided educational institutions. These include advertisement of the post, constitution of Staff Selection Committee. Clause (8) of Rule 12 postulates approval of the competent authority as a condition for valid appointment of teaching or non-teaching staff by aided or unaided

institutions. Of course, this clause also provides for deemed approval in case the competent authority fails to take necessary action within two months from the date of receipt of the proposals in respect of unaided posts.

The 1993 Rules have been framed by the State Government in exercise of the power conferred upon it under Section 99 read with Sections 20, 21, 79, 80 and 83 of the 1982 Act. The same were published in Andhra Pradesh Gazette dated 3-1-1994 and were circulated vide G.O.Ms.No.1, Education (P.S.2), dated 1-1-1994. It is, thus, evident that for the purpose of recruitment of teachers against the aided posts, the State Government has, by virtue of Rule 3 of the 1993 Rules, designated the District Educational Officers and Regional Joint Directors of School Education as the competent authorities. They have the power to grant or refuse permission to the management of private schools to make recruitment against the vacant posts. They also have the power to approve or refuse approval to the appointment made by the management on the recommendations made by the Staff Selection Committee constituted under Rule 13 of the 1993 Rules. The definition of the term 'competent authority' contained in Rule 2 (1)(e) is relevant for the purpose of granting permission and/or recognition to schools and not for the purpose of recruitment of teaching and non-teaching staff.

If the decision contained in Memo dated 20-10-2004 is read in the light of the above interpretation of the relevant rules, we do not have any hesitation to approve the view taken by the learned Single Judges that the ban imposed on the recruitment against existing vacancies is not applicable to the cases in which permission had already been granted by the District Educational Officer or the Regional Joint Director. Such permission will have to be construed as a specific authorization by the competent authority for the purpose

of making recruitment against the existing post.

The argument of the learned Advocate General that the State Government is the sole repository of power to accord sanction for recruitment of staff in the aided institutions is meritless and is liable to be rejected because the State Government has specifically authorized the District Educational Officers and the Regional Joint Director to perform the functions of 'competent authorities' for the purposes of the 1993 Rules, which necessarily include Rules 10 to 13. If any other interpretation of the term 'competent authority' is given, then the delegation of power by the State Government to the authorities specified in Rule 3 would become otiose. Indeed, it is neither the pleaded case of the appellants nor the learned Advocate General has argued that Rule 3 was amended, modified or repealed by a notification issued by the State Government in exercise of the power vested in it under Section 99 read with Sections 20, 21, 79, 80 and 83 of the 1982 Act.

We shall now consider whether rationalization exercise undertaken by the authorities of the Education Department and the consequential decision to declare some teachers surplus in some schools and transferring / absorbing them in other schools is legally sustainable.

Rule 10 of the 1993 Rules enumerates the conditions which are required to be fulfilled for grant of permission / recognition to the schools. Clause (12) of Rule 10 lays down that the teacher – pupil ratio in respect of primary schools shall not exceed 1 : 20 and in respect of other schools, the ratio shall not exceed 1 : 40. Clause (17) lays down that when private aided schools are forced to close down or whenever the management of such school goes out of way to remove any of its staff member or whenever there is a fall in the

strength in a private aided school for two consecutive academic years, the competent authority can transfer the staff along with the post to any other needy private aided or local body school within the district. To put it differently, the transfer of staff from one school to the other is permissible only in either of the following contingencies:

1) when the private aided school is forced to be closed;
2) when the management of the school goes out of way to remove its staff; and
3) when there is a fall in the strength of private aided school for two consecutive academic years.

In the cases before us, the teachers have been declared surplus neither on account of forced closure of the private aided schools nor as a sequel to their removal by the management. Rather, the admitted case of the parties is that the teachers were declared surplus on the basis of exercise undertaken by the departmental authorities pursuant to interim order dated
31-10-2005 passed by the Division Bench. Since that order does not lay down any criteria for rationalization, we shall have to fall back on the relevant rules and the norms laid down by the government vide G.O.Ms.No.103, dated 5-8-2005, the relevant portions of which are reproduced below:

"**G.O.Ms.No.103 Dated:5th August,2005,**

Read the following:

1. G.O.Ms.No.39, Education(Ser.V) Dept., dated:03.05.2002
2. G.O.Ms.No.96-Edn.(Ser.II) Deptt., dt.25-7-2005
3. From the DSE, Hyd., Lr.Rc.No.1200/C3-1/2005, dt.28-6-2005.

&&&

ORDER:

In the G.O read above, certain norms have been

prescribed for staffing pattern for the purpose of rationalization of staff under various managements viz., Government, Zilla Parishad, Mandal Parishad, Municipal, Private aided Schools.

The Director of School Education, Hyderabad has reported in his letter 3rd cited, some District Educational Officers that there is a need to rationalize the schools and posts in Primary, Upper Primary and High Schools as there are some schools with over strength of students and less sanctioned teaching posts and some schools with uneconomic strength of students with more teachers.

The Government after careful consideration hereby issue the following norms of staff pattern for rationalization of staff under various managements in supercession of the orders issued in the reference 1st read above.

1. CONSTITUTION OF COMMITTEE:

The Committee consists of the following:-

1. District Collector – Chairman
2. Chief Executive Officer, Zilla Parishad – Member
3. Municipal Commissioner/Correspondent of the Aided Management concerned – Member
4. District Educational Officer – Member-Secretary

The Committee is the competent to rationalize the school and staffing pattern under various managements i.e., Government (including Zilla Parishad & Mandal Praja Parishad Schools), Municipal and Private Aided Schools.

2. NORMS FOR RATIONALIZATION OF SCHOOLS:

Schools with same medium of instruction (Government/Zilla Parishad/Mandal Praja Parishad / Muncipal & Private Aided).

i) If two or more Primary Schools are functioning in the same premises both/all the schools shall be amalgamated into a single Primary School.

ii) If two or more Upper Primary Schools are functioning in the same premises both/all the schools shall be amalgamated into a single Upper Primary School.

iii) If two or more High Schools are functioning in the

same premises both/all the schools shall be amalgamated into a single High School.

iv) If two or more Primary and Upper Primary Schools are functioning in the same premises both/all the schools shall be amalgamated into a single Upper Primary School.

v) If two or more Primary and High Schools are functioning in the same premises they shall be amalgamated in such a way, that only one Primary School and one High School shall function in the same premises.

vi) If two or more Upper Primary Schools and High Schools are functioning in the same premises, then the Primary School of the Upper Primary School shall be separated as a Primary School with classes I to V and the Upper Primary sections of 6^{th} and 7^{th} class shall be amalgamated with High School. Therefore there shall be one Primary School and one High School will function in the premises.

vii) If Primary, Upper Primary and High School are functioning in the same premises, then the Primary sections of Upper Primary School shall be amalgamated with the primary school and the Upper Primary sections (Class VI + VII) shall be (class VI + VII) amalgamated with the High School and on the whole two schools i.e. one Primary and one High School shall only function.

viii) In case of two or more schools running in the same premises with different media of instruction then, the schools with same medium shall be amalgamated such that there shall be schools with single medium only.

ix) The Girls High Schools shall not be amalgamated with co-education or Boys High Schools.

3. <u>NORMS FOR SHIFTING OF POSTS DUE TO</u>

AMALGAMATION OF SCHOOLS:

i) The posts would be allotted to the schools as per the prescribed staff pattern.

ii) The surplus posts shall be shifted to the needy schools, in order of gravity of need as per locality of schools and strength. The surplus posts shall be shifted to the schools located in Category IV area first and then to III, II & I areas. Even in the Category IV area the order of allotment shall be made based on strength only. **(The strength as on 30th September of the previsous year shall be taken for this purpose)**.

iii) The surplus teachers shall be transferred under rationalization through counseling as per G.O.Ms.No102, S.E (Ser.VI) Department, dt: 05-08-2005.

4. NORMS FOR STAFF PATTERN:

i) Primary Schools:

A minimum of 2 Secondary Grade Teachers could be provided to a Primary School having a strength upto 100. One additional teacher may be provided for every 40 students over and above the strength of 100.

Example:- For a strength of 101 to 140 - 3 SGTs ; for a strength of 141 to 180 - 4 S.G.Ts and so on

ii) Upper Primary Schools:

a) Classes I to V: Secondary Grade Teachers could be provided as per the norms prescribed for Primary Schools.

b) Classes VI & VII: The optimum strength of a class/ Section is 40. The second section of a class is formed if the strength of class exceeds 60. Third section could be formed if the strength of the class exceeds 100. Similarly 4^{th}, 5^{th} sections etc., could be formed.

c) The following minimum number of teachers could be provided to every Upper Primary School:

School Assistant (Social Studies) - One

School Assistant
(Mathematics/ Sciences
(Biological Sciences/Physical Sciences) - One

Language Pandit (1st Language) - One

Language Pandit (2nd Language) - One

d) If the number of sections is more than two, additional post of School Assistants could be provided @ one per section. The following order could be followed for providing School Assistants for additional sections:

1. School Assistant (Social Studies)
2. School Assistant
(Science[Biological Sciences/ Physical Sciences])
(If School Assistant (Mathematics) is already working)

OR

School Assistant (Mathematics)
(If School Assistant (Science) is already working)

e) One Additional Language Pandit shall be provided if the workload exceeds 30 periods per week. Two Additional Language Pundits could be provided if the workload exceeds 60 periods per week and so on.

iii) High Schools:

a. Classes VI to X : The optimum strength of a class/ section is 40. The second section of a class could be formed if the strength of class exceeds 60. Third section could be formed if the strength of the class exceeds 100 similarly 4th, 5th sections etc., shall be formed.

b. The following minimum number of Teachers could be provided for every High School:

Head Master - 1
School Assistant (Mathematics) - 1
School Assistant (English) - 1
School Assistant (Physical Science) - 1
School Assistant (Biological Science) - 1
School Assistant (Social Studies) - 1
School Assistant (Language)/ (1st Language) -1 or 2

School Assistant (Language)/ (2nd Language) -1
School Assistant (Physical Education/PET) - 1

c. If the number of sections in a School are more than five (5) the additional teachers could be provided for non-language subjects and English in the following order of priority.

School Assistant (Mathematics)
School Assistant (English)
School Assistant (Physical Science)
School Assistant (Biological Science)
School Assistant (Social Studies)

d. One Additional School Assistant (Language) could be provided if the workload exceeds 30 periods per week. Two Additional School Assistant (Language) shall be provided if the workload exceeds 60 periods per week and so on.

e. One Additional School Assistant (Physical Education/ Physical Education Teacher) could be provided if the strength exceeds 400. Two additional School Assistants (Physical Education)/ Physical Education Teacher shall be provided if the strength exceeds 800 and so on.

Teachers in (Arts, Music, Dance, Drawing etc.) may be provided as per requirement i.e., One teacher for a work load of 30 periods per week.

Note:- Primary School sections shall be detached from High Schools.

5. NORMS FOR SHIFTING OF SURPLUS POSTS DUE TO UNECONOMIC STRENGTH:

i) xxx xxx xxx xxx

ii) xxx xxx xxx xxx

iii) Aided Schools

The posts shall be shifted to other Schools under the same management within the District if there is a need. If not, the posts shall be shifted to Government/ Zilla Parishad/ Mandal Parishad Schools located in

category IV, III, II, I areas in that order if there is a need.

The surplus man power in the aided schools will only be transferred against the sanctioned and vacant posts in another aided school of the same management or of a different management."

Here it is also appropriate to refer to the instructions issued by the Director vide proceedings Rc.No.140/ B2-1/2005, dated 3-11-2005. The same read as under:

"All the Regional Joint Directors of School Education and District Educational Officers in the State are informed that the Hon'ble High Court has issued orders on 31-10-2005 in writ appeals filed by the department to take up the rationalization work in private aided schools by 21-11-2005.

Therefore, all the Regional Joint Directors of School Education and District Educational Officers in the State are requested to take up the rationalization work in private aided schools as per the guidelines issued below and as per the norms issued in Government orders 1st read above. Proforma I, II, III and annexure are enclosed.

1) The District Educational Officer should constitute No. of teams consisting three members of each team with HM/Lecturers of training colleges.
2) Each team should visit 20 aided schools within a week and submit the report to the DEO in the prescribed format I, II and III.
3) Each member of the team and Assistant Director should sign in the proforma with the name and designation with seal.
4) The DEO should take up rationalization work on war foot basis and it should be completed by 14.11.2005 positively.

The report should be submitted to the Director of School Education by 16-11-2005 in soft copy and hard copy through e-mail/special messenger in the annexure without fail so as to enable to submit the same to the Government / Hon'ble High Court."

A combined reading of the relevant extracts of G.O.Ms.No.103 dated 5-8-2005 issued by the State Government and proceedings dated 3-11-2005 issued by the Director shows that while the instructions issued by the government envisaged constitution of the committee comprising of District Collector, Chief Executive Officer, Zilla Parishad, Correspondent of the school concerned and District Educational Officer, the committee constituted by the Director did not have any representative of the management of the private school. It is, thus, evident that the committees constituted by the Director were not in consonance with the policy framed by the government. Not only this, while instructing the committees to visit the schools, the Director did not remind them of the parameters laid down by the government for rationalization of the schools and staff. It is, therefore, reasonable to take the view that the exercise for rationalization was undertaken by the authorities of the Education Department in violation of the norms prescribed by the State Government. Even if it is assumed that the Director could constitute committees comprising Head Master / Lecturers of training colleges and the non-involvement of the representative of the aided schools in the exercise of rationalization undertaken in pursuance of order dated 31-10-2005 passed by this Court is inconsequential, we are also inclined to agree with the learned counsel for the petitioners that the recommendations made by the committees constituted by the Director, which resulted in declaration of some teachers as surplus in some schools and their consequential absorption in other schools was farce. In most of the writ petitions, affidavit has not been filed on behalf of the respondents to controvert the assertion that the teams constituted by the Director visited the schools without giving any notice to the Correspondent or Head Master and did not check the records relating to attendance of the students. Not only this, in some of the cases, the teams visited on

a day it was heavily raining and, on that account, majority of the students did not come to the schools. Even in the counter-affidavit of Shri P. Krishnaiah, filed in Writ Petition No.25215 of 2005, this position has not been specifically denied. It is not the pleaded case of the State and its functionaries that the teams constituted by the Director had taken note of clauses (12) and (17) of Rule 10 of the 1993 Rules and then made recommendations which resulted in some teachers being rendered surplus. Therefore, it must be held that the exercise for rationalization undertaken by the departmental authorities is violative of Rule 10 (17) read with Rule 10 (12) and the norms prescribed by the government vide G.O.Ms.No.103, dated 5-8-2005.

In view of the above conclusion, we do not consider it necessary to adjudicate on the vires of G.O.Ms.No.103, dated 5-8-2005. However, we feel that it will be more prudent for the government to examine the entire issue objectively and take corrective measures if it is found that the norms are contrary to the provisions contained in Rule 10 (12) or 10 (17) of the 1993 Rules.

In the result, the appeals are dismissed. The writ petitions filed by the management of the private schools and others are allowed. Now, the management of the private schools shall be free to appoint selected candidates and seek approval of such appointments from the competent authority.

The exercise of rationalization undertaken in furtherance of interim order dated 31-10-2005 passed by this Court and directions contained in letter dated 3-11-2005 issued by the Director of School Education are quashed. However, it is made clear that this order shall not prevent the competent authorities from undertaking fresh exercise for rationalization, which may lead to declaration of certain

teachers' surplus and for absorption of such surplus teachers.

Needless to say that any person adversely affected by the fresh exercise to be undertaken by the competent authorities shall be free to challenge the same by availing appropriate legal remedy.

All the miscellaneous petitions are disposed of as infructuous.

G.S. SINGHVI, CJ

G. V. SEETHAPATHY, J

December 29, 2006

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[1] (2002) 1 ALD 96 (DB)